


**Department of Human Resources
Social Services Administration
311 W. Saratoga St.
Baltimore, MD 21201**

DATE: January 15, 2015

POLICY #: SSA-CW #15-1 (Revised)

TO: Directors, Local Departments of Social Services
Assistant Directors, Services

FROM: 
Deborah Ramelmeier, Acting Executive Director
Social Services Administration

RE: Old Age, Survivors' and Disability Insurance (OASDI), Social Security Disability Insurance (Title II) and Supplemental Security Income (Title XVI) benefits applied for on behalf of children in Out-of-Home Placement

PROGRAMS AFFECTED: Out-of-Home Placement Services

ORIGINATING OFFICE: Out-of-Home Placement

ACTION REQUIRED OF: All Local Departments

REQUIRED ACTION: Implement Policy and Procedures

ACTION DUE: January 15, 2015

CONTACT PERSONS: Jill Taylor, LCSW-C
Program Manager, Out-of- Home Placement
410-767-7695
jill.taylor@maryland.gov

PURPOSE:

The purpose of this policy is to provide direction as to the implementation of the notification requirements of Local Departments of Social Services (LDSS) regarding Old Age, Survivor's and Disability Insurance (OASDI), Social Security Disability Insurance (Title II) and Supplemental Security Income (Title XVI) benefits applied for on behalf of children in care.

BACKGROUND:

On September 26, 2013, the Court of Appeals of Maryland released its decision in *In re: Ryan W.*, a Child in Need of Assistance case in which a foster child challenged the use by the Baltimore City Department of Social Services (BCDSS) of his OASDI benefits to reimburse itself for the current costs of his care.

Local departments of social services routinely apply for social security benefits on behalf of children in their care, become the representative payee for those benefits, and use those benefits to offset the cost of foster care, as outlined in COMAR 07.02.11.29(K) and (L). Ryan W. disputed the local departments' authority to use the funds to reimburse itself and requested that the department return the funds. The argument was the Department should have either saved his OASDI benefits payments or spent the benefit payments on items or services other than the cost of his care. Ryan W. also challenged BCDSS failure to notify him that it had applied to receive OASDI benefits on his behalf as his representative payee.

The court upheld the legitimacy of COMAR 07.02.11.29; the Department's authority to use social security benefits to offset the cost of care. As to the Department's failure of notification, the court agreed with Ryan W. and imposed two new requirements on local departments so that the child's Child In Need of Assistance (CINA) attorney can, if appropriate, pursue any applicable federal administrative and/or judicial review procedures concerning the determinations made by the Social Security Administration with regard to the appointment of a representative payee and the payee's use of the funds.

DEFINITIONS:

"Old Age, Survivor's and Disability Insurance" (otherwise known as OASDI) is a comprehensive federal benefits program that provides monthly benefits intended to replace, in part, the loss of income as a result of retirement, disability, or death.

"Social Security Disability Insurance" (otherwise known as SSDI, Social Security Disability, or Disability Insurance Benefits (DIB)) falls under Title II of the Social Security Act. SSDI provides disability benefits to individuals who have earned enough work credits for qualify.

"Supplemental Security Income" (otherwise known SSI) falls under Title XVI of the Social Security Act. SSI provides disability benefits to individuals who have never worked, or whose work history has not earned them the credits needed to qualify for Social Security Disability Insurance (SSDI), can apply for disability benefits under the SSI program.

ACTION:

Steps to complete when applying for benefits on behalf of children in care:

The LDSS shall adhere to the following steps when applying for OASDI, Title II and Title XVI benefits for children in their care:

- The LDSS staff/caseworker must immediately notify a child's CINA attorney at the time they make an application to be appointed as a child's representative payee for receipt of OASDI, Title II and Title XVI benefits. It is the LDSS staff/caseworker responsibility to complete the *Notification To Child's Counsel For OASDI, Title II and Title XVI Benefits* form and scan the document into MD CHESSIE file cabinet.
- For all cases that the LDSS has been named the representative payee, LDSS must notify the child's CINA attorney of the date of appointment as representative payee, and the amount and date of the receipt of the benefits for the period since the last permanency planning hearing. The most efficient means of providing this information will be to include it in the court reports prepared for each permanency planning hearing in a separate section named OASDI, Title II and Title XVI Benefits for Children in Care. The LDSS will include in the court report: the date the LDSS became representative payee, if applicable any lump sum payments/amount and the monthly amount received by the LDSS. Additionally, the LDSS shall complete Section 4 of the *Notification To Child's Counsel For OASDI, Title II and Title XVI Benefits* and forward to the child's CINA attorney reporting the monthly amount and date benefits awarded. **All discussions with respect to OASDI, Title II and Title XVI benefits and must be documented in MD CHESSIE on a contact note.**

APPENDIX I:

**NOTIFICATION TO CHILD'S COUNSEL FOR
OASDI, TITLE II AND TITLE XVI BENEFITS**

The Local Department of Social Services (LDSS) must notify child's counsel when the LDSS applies to be the child's representative payee for receipt of OASDI, Title II and Title XVI benefits. This application must be completed and forwarded to the child's counsel immediately upon applying for such benefits. Once benefits are received, the LDSS must then complete Section 4 and forward this application again to the child's counsel- reporting monthly amount and date benefits awarded.

Section 1. Identifying Information

Child's Name: _____ Date of Birth: _____

LDSS Address: _____

City: _____ State: _____ Zip Code: _____ Phone () _____

Section 2. Counsel Information

Child's Counsel Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____ Phone () _____

Section 3. Benefit Information

Benefits Applied for (check all that apply):

_____ Old Age

_____ Survivors (please check box that applies: Mother ☐ Father ☐)

_____ Disability Insurance

_____ Social Security Disability Insurance (Title II)

_____ Supplemental Security Income (Title XVI)

Date LDSS applied to be payee: _____ Date Counsel Notified: _____

I attest that the information I provided above is accurate and understand that supporting documentation may be required.

Local Department of Social Services Representative Signature _____ Date _____

Section 4. Confirmation of Benefits (To be completed and transmitted to counsel once benefits are awarded.)

Date Benefits Awarded: _____ Monthly Amount Awarded: _____

Date Counsel Notified of Commencement of Benefits and Monthly Amount Awarded: _____

I attest that the information I provided above is accurate and understand that supporting documentation may be required.

Local Department of Social Services Representative Signature _____ Date _____